United States Circuit Court, Northern District of Illinois.

HENRY R. ALLERTON v. CITY OF CHICAGO AND CHICAGO CITY RAILWAY CO.

The police power is inherent in a municipal corporation, and cannot be transferred.

Power to "regulate the management" of a business includes the power to require a license for carrying it on.

Under a statute authorizing a city to license hackmen, omnibus drivers, "and others pursuing like occupations," the city has the power to require street railway companies to take out licenses for their cars.

The distinction between the taxing and the police power discussed by DRUMMOND, J.

SUR demurrer to bill in equity.

The council of the city of Chicago passed an ordinance requiring the companies which operated street cars for the conveyance of passengers upon any lines of horse or city railway within the city of Chicago, to obtain a license in the month of April, of each year, and pay for the same the sum of fifty dollars for each car operated or run. A penalty was imposed for failing or refusing to take out a license. The company obtaining the license was required to place conspicuously in every car so operated and run in the city, a certificate signed by the city clerk, and giving the number of the car, and stating that a license had been obtained, and that the necessary fee had been paid; and a penalty was also imposed for a failure to post or keep such certificate in the car.

The plaintiff, a stockholder in the Chicago City Railway Company, filed this bill to enjoin the payment of the license fee required by the ordinance. The defendants demurred.

Hitchcock, Dupee & Judah, C. Beckwith and *Goudy, Chandler & Skinner*, for plaintiff.

R. S. Tuthill and *A. S. Bradley*, for the defendants.

DRUMMOND, Circuit Judge.—The only question in the case is, whether the ordinance in question is valid. Several corporations operating street cars in the city of Chicago, have been authorized to construct their railways and operate them, by various ordinances which have been from time to time passed; and these ordinances

have been recognised and affirmed, many of them by the legislature of the state. By virtue of these ordinances and acts of the legislature, the companies have the right to run their cars for the transit of passengers through the city. It cannot be said, therefore, that the effect of the ordinance which has been specially referred to, although it is called a license, would be to give the companies the privilege of running their cars. That they have by virtue of the ordinance and the acts of the legislature. There can be no doubt that the legislature would have the right, under the Constitution of 1848, which was in force when the franchise was granted, to tax the corporations for the use of their franchise. That is a tax which is entirely independent of the value of the cars, tracks and other tangible property of the corporations, and so treated by the Constitutions of 1848 and 1870. But there are many difficulties with this branch of the subject. There are certain conditions required by the Constitution of 1870 as pre-requisites to the imposition of a tax of this kind, even conceding that the legislature has authorized the city to impose the tax, and I, therefore, without giving any decided opinion upon that part of the case, prefer to place my decision upon another ground, and to sustain the ordinance as a regulation of the police power of the city. This is always a subsisting power which it is generally held cannot be transferred by the city, but is inherent in its municipal organization. There can be no controversy about the power of the city over many things connected with the operation of the city railways. Admitting that because of the price of fare agreed upon there can be no change in that, yet by virtue of its police power, the city can, to a great extent, regulate the running of the cars, prescribe rules and laws as to speed, stoppage and other things connected with the operation of the railway. This has not been questioned by the counsel of the plaintiff; but it is claimed this cannot be considered a police regulation, because it is manifestly the exercise of the taxing power of the city. It is argued that the price of the license is so large that the intent is manifest. It is very difficult to lay down any absolute rule upon this subject, and to hold that a particular sum may be within the police power of the city, and another sum beyond the power, and a mere tax.

By the general law of 1872, for the incorporation of cities and villages in this state, it is provided that the city council in cities shall have authority to license hackmen, draymen, omnibus drivers,

cabmen, expressmen, and all others pursuing like occupations, and to prescribe their compensation. This was obviously intended as conferring a police power upon the city council in relation to the various classes named in the statute. This is a power that has been uniformly exercised, and construing the statute literally, cannot well be questioned. But it is claimed that it does not include the street railway, because it is not pursuing an occupation like any of those named.

Omnibuses may be licensed. They may pass over even the same streets as those occupied by the horse railways, and they may carry passengers in the same manner. The only distinction which can be called substantial between the two classes of occupation, is that one carriage goes upon iron rails, in a regular track, with wheels, and the other carriage goes with wheels upon the ordinary street way.

The Supreme Court of Pennsylvania has held that these street railway carriages are of a like nature as omnibuses, and there can be no doubt, I think, of the right of the city to demand a license from all omnibus drivers, and to include every omnibus which may belong to a particular company or corporation, and to require the payment of a license for such omnibus that may be so owned and used.

The Court of Appeals of New York, in the case of *Mayor* v. *Second Avenue Railroad*, 32 N. Y. 261, held that an ordinance of the city of New York, in many respects like this, was invalid, as an attempt, through color of a license, to impose a tax upon the railroad company, refusing to treat it as an exercise of the police power of the city. The price charged in that case for the license was the same as in this.

In the case of *Frankford & Philadelphia Passenger Co.* v. *City of Philadelphia*, 58 Penn. St. 119, where the license fee was the same, and *Johnson* v. *Philadelphia*, 60 Penn. St. 445, the Supreme Court of Pennsylvania took a different view of such an ordinance, and treated it as a police regulation merely; and such seems to be the view of the Supreme Court of this state, in the case of the *Chicago Packing & Provision Co.* v. *City of Chicago*, 88 Ill. 221.

In the case of *Frankford & Philadelphia Passenger Co.* v. *City of Philadelphia*, the city obtained its power to impose the license from a statute substantially similar to that under which the city of Chicago claims the power in this case. In that case the Act of

the legislature declared that the City Council of Philadelphia should have authority to provide for the proper regulation of omnibuses, or vehicles in the nature thereof, and to this end "it shall be lawful for the council to provide for the issuing of licenses to such and so many persons as may apply to keep and use omnibuses, or vehicles in the nature thereof, and to charge a reasonable annual or other sum therefor." In that statute, the words "vehicles in the nature thereof;" in this, the words "pursuing a like occupation" are used. I cannot see that there is any substantial distinction in that respect between the two statutes.

In the case in 88 Illinois, already referred to, the corporation was organized and doing business under the laws of this state. A question arose in that case as to the power of the city to issue a license. It was denied, in the argument of the case, that the power existed, but the Supreme Court held that under the power "to regulate the management" of the business, the city had the right to issue a license, and to prescribe the compensation. That was also under the same law, the Act of 1872, which conferred power upon cities to grant licenses, and regulate omnibus drivers, and all others pursuing a like occupation, and to prescribe their compensation. The Supreme Court of this state decides in that case that the power to require a license is one of the means of regulating the exercise of a pursuit or business; that there are other means that might be adopted to accomplish the purpose, but that these municipal authorities are not restricted as to the means that they shall employ to regulate the business; and various authorities are cited by the court in support of the view which they take; and they repeat the ruling which had been previously made that a license was not, in the constitutional sense of the term, a tax.

The Supreme Court must also have considered and passed upon a question which has been discussed in this case, namely: whether or not the act which gave the authority to the city to license, was a general law under the constitution of this state; and they held that it was, and that it was intended to apply to all cities which might adopt it.

It is true that was a case of licensing a business which was generally admitted to be injurious in its character to those near the place where it was carried on; but it was a question of power, and the point in controversy was whether the city of Chicago had the right to exercise the power of licensing. The license fee demanded

in that case was one hundred dollars. It seems to me that the question involved in this case arose substantially in that, and it was decided by the Supreme Court of the state that it was a valid exercise of the power to regulate a particular business. That is also the view taken by the Supreme Court of Pennsylvania in the cases referred to.

In view of these decisions and of several decisions of the Supreme Court of the United States within the last few years (*Munn* v. *Illinois*, 94 U. S. 113, and others), I think the weight of authority is in favor of regarding this as a police regulation.

One of the difficulties I have had with the case, has been whether it ought not to be regarded as a tax for revenue under the form of a license. It may be conceded that the argument is strong for treating it as a revenue measure; but as I before stated, there are some objections which I consider very weighty, and which would prevent me at this time from placing the decision on that ground. It may be admitted that, viewing it as a police regulation requiring the payment of a fee for the license, in amount it goes to the very verge of the exercise of police power; but as other courts have held that such a tax did not exceed that limit, I cannot hold that it does in this case; and, therefore, I shall, as at present advised, sustain the ordinance in question as a valid exercise of the police power of the city council.

There have been some arguments used by counsel which, I think, do not properly apply to the pleadings. It is insisted that the court must construe this as a tax, and not a mere police regulation. It is admitted that the Court of Appeals of New York did construe a similar license fee as a tax. The Supreme Court of Pennsylvania has given a different construction, and held it to be a police regulation. There is nothing in the bill by which the court can regard it absolutely as the exercise of the taxing power of the city. There is nothing in the bill which would authorize the court to hold, if it were a tax, that it was in violation of the Constitution of 1870, as not being uniform upon the particular class on which it operates. It is urged that it cannot be treated as a tax, because, if so, it would not be within this requisition of the Constitution of 1870, because the street railways come in direct competition with some of the steam railways; as that of the Illinois Central and the North-Western to Hyde Park and Evanston. There is nothing in the pleadings which would warrant the court in considering these

facts, unless the court should take judicial notice that they do thus come in competition, without any allegation in the pleadings. Under the authorities, and upon the statements contained in the pleadings, the court cannot necessarily construe this as a tax. The court is at liberty, I think, to construe it as a police regulation.

These views have been given for the purpose of enabling the parties, if they desire, to take the case to the Supreme Court of the United States. The District Judge who heard the application for an injunction in the first instance, and granted it, is inclined to hold, as I understand, that this was not the proper exercise of the police power. I hold, for the purpose of deciding the case, that it is; and if the case is to be determined by the pleadings as they at present stand, it can be certified up to the Supreme Court as upon a division of opinion between the judges. If, however, the counsel desire to raise some of the questions which have been discussed in the argument, I think it would be advisable for them to amend the bill, and if they wish, leave will be granted for that purpose.

I. MAY STREET CAR COMPANIES BE REQUIRED TO PROCURE A LICENSE?

In Iowa it was held that the grant of an exclusive right by city ordinance to a street railway company, to construct, operate, and maintain over the streets of the city a street railway for the carriage of passengers, containing no provision in relation to the payment of a fee or license, did not exempt the company from paying a license fee, provided by a prior ordinance to be paid by all persons engaged in carrying passengers: *State* v. *Herod*, 29 Iowa 123. This case is, however, distinguishable from the principal case in this: the ordinance requiring the license was passed before and was in force at the time when the street car company was chartered, while in the latter case, the company was chartered before the license ordinance was passed.

It is not conceived, however, that this makes any difference, since the charter cannot give immunity from police regulation: *Thorpe* v. *Rutland & B. Railroad Co.*, 27 Vt. 149.

In *Frankford, &c., Co.* v. *Philadelphia*, 58 Penn. St. 119, it was held that corporations chartered to do business in a city are to be regarded as inhabitants of the city, and, unless exempted, are subject to its ordinances; that a grant to a corporation to carry passengers in cars over the streets of a city does not necessarily involve exemption from liability to municipal regulation, the right is neither greater nor less than a natural person possesses; that when a corporation is authorized to carry on a specified business within a municipal corporation, it is intended that the business shall be conducted under the restrictions which govern others transacting the same business; that liability to restrictions is involved in the designation of the place where the corporation's business is to be carried on; that a reasonable regulation of a privilege is not a denial of the right to exercise it; and that an ordinance of Philadelphia requiring passenger cars to be numbered and to be licensed on paying a stipulated sum for each car is a valid police regulation. And in affirm-

ance of these views, see *Johnson* v. *Philadelphia*, 60 Penn. St. 445.

Apparently in conflict with these cases, is that of *The Mayor &c. of New York* v. *Second Ave. Railroad Co.*, 32 N. Y. 261, in which the railway companies were required to pay a fee to the mayor and to receive in return a license or certificate that the money had been paid. The ordinance imposed no duties to be observed by the companies or their servants, but the single act of paying the money. "It prescribes," said the court, "no regulations in regard to the size, dimensions, comfort and cleanliness of the cars, the speed at which the same shall be run, the manner of receiving and discharging passengers, their numbers and names, and the stations at which they shall stop. Regulations of police are regulations of internal or domestic government, forbidding some things and enjoining the performance of others for the security and protection, and to promote the happiness of the governed." The collection of revenue appeared to be the only object of the ordinanee. It was therefore not a police regulation.

The court does not deny that a police regulation of street railway companies may be made. On the contrary, quite the reverse is implied. Nor is it denied that a license may be required to be procured, *as a police regulation*. The decision is only that an ordinance requiring a license to be procured *for revenue and not for police purposes* is invalid. The conflict, therefore, is only apparent; and the case is also in harmony with the rule laid down in *Johnson* v. *Philadelphia*, *supra*, that if a municipal regulation be adopted which would be lawful if intended for one purpose, and unlawful if for another, the presumption is that the purpose was lawful unless the contrary clearly appear. In the New York case the "unlawful purpose" of the ordinance, viz: the collection of revenue did "clearly appear;" indeed, it was the only purpose that appeared at all.

The cases seem therefore to sustain the authority of a municipality to ordain, as a police regulation, that street car companies shall take out licenses for their cars. But whether or not a city may require a street car company so to do de pends upon its charter. In the two Pennsylvania cases power was conferred upon the city "to provide for the proper regulation of omnibuses, or vehicles in the nature thereof," and the court held this applied to "passenger railway cars. They are omnibuses, or if not, they are vehicles in the nature of omnibuses:" *Frankford, &c., Co.* v. *Philadelphia*, 58 Penn. St. 119, 125; *Johnson* v. *Philadelphia*, 60 Id. 445. The Illinois statute confers upon the city of Chicago power to license "omnibus drivers," &c., "and all others pursuing like occupations." This would seem broad enough to warrant the licensure of street railway companies.

II. What may Street Car Companies be charged for a License?

A municipal or other government, having power to issue and to require a license to be taken out, may charge for it a fee sufficient to cover the expenses of issuance and registration. All the license cases are agreed as to this.

Some cases go further and hold that a fee exceeding the cost of issuing and registering the license may be charged, on the ground that the license confers a special privilege or franchise for which the fee is only a price proper to be paid for it. Such a case is *Chilvers* v. *People*, 11 Mich. 43, where the license conferred the privilege of running a ferry from Detroit to Windsor, across the Detroit river.

And a license fee may be imposed as a means to restrain the carrying on of a business or the keeping of property, where to carry on such business or to keep such property to an unlimited extent, would injuriously affect the health, safety or welfare of society. Thus, the sale of

intoxicating liquors may be so restrained: *State* v. *Cassiday*, 22 Minn. 312; those who have not the means with which to purchase a license being debarred from engaging in the business; and in Wisconsin a dog license fee exceeding the cost of issuance and registration was justified as a proper exercise of police power, the court holding that the legislature might impose such sums for licenses as would operate as a partial restriction upon the business or upon the keeping of the particular kinds of property regulated: *Tenney* v. *Long*, 16 Wis. 566; and *Carter* v. *Dow*, 16 Id. 299.

It is difficult, therefore, to see any reason why, if in order to relieve overcrowded streets, it be necessary to reduce the number of cars being run, or to preclude an increase of their number, a license may not be required to be procured at a cost which shall operate a partial restraint upon the business. Judge SHARSWOOD was evidently of opinion that a charge for street car licenses sufficient to effect this purpose was proper, for he says: "In the case before us it may be allowable to conjecture that the principal object of requiring the license was to place some check upon the number of cars employed on the road, so that the streets might not be unduly obstructed and their passage by the citizens at large interfered with and prevented. If the sum charged was more than sufficient for this or any other proper object of police regulation, then indeed a question might arise as to whether it was not in effect a tax on the franchise:" *Johnson* v. *Philadelphia*, 60 Penn. St. 445, 450.

A number of cases justify the imposition of a license fee exceeding the cost of issuance and registration, and reason thus: The business or occupation sought to be licensed requires extra supervision and care from the city authorities; or, it uses and injures the public property to an extent greater than ordinary employments, and thus occasions the municipal ity extra and especial expense. Persons engaging in such business or occupation ought, therefore, to indemnify the municipality for the extra expense caused by them, and this, it is held, warrants the imposition of a license fee reasonably sufficient to pay for it.

Thus in *Cincinnati* v. *Bryson*, 15 Ohio 625, a fee of $3 was held authorized to be charged for a license to run a dray, and the court said: "It is manifest to every one, that in a large city vehicles of this description cause great destruction to the public ways; far greater than the usual ordinary travel of citizens otherwise employed. There is, therefore, no injustice in exacting a reasonable portion of the expenses which such special occupations cause to the community; and those who enjoy the special privilege, can refuse to bear a reasonable portion of the burden but with an ill grace. * * * The employment gives the drayman or hackman special privileges, which he enjoys to the prejudice of the city, in the injury necessarily done to her streets and pavements, to an amount far greater than any benefit to be derived from the price of the license, excluding the necessary burden of supervision."

And in *Cincinnati* v. *Buckingham*, 10 Ohio 257, an ordinance that no person should be licensed or permitted to occupy any place in the market, but upon making payment of twenty-five cents, for every market-day and occupation, was held valid. "The open spaces for the accommodation of the more transient frequenters of the market * * * demand the interposition of the city authorities to prepare, pave and keep them clean, to arrange the stands, preserve order and enforce the rules." But see *Kip* v. *Paterson*, 26 N. J. L. 298.

The Supreme Court of Michigan, CAMPBELL, J., dissenting, held that a fee of $5, required for a license to keep a stall to sell fresh meats outside the public markets was not a tax but a reasonable compensation which the city

of Detroit may demand from those who will not sell in the public markets, for issuing the license, and besides for the additional labor of its officers, and expense thereby imposed. If, said the court, the vending of meats and vegetables be carried on elsewhere than at the public market, "the city may require the license and the bond, for protection and regulation; and may require such reasonable fee as will compensate either partially or fully for the additional expense of inspection and regulation thereby incurred. * * * If it be conceded that the city may demand a sum sufficient to defray the expense of making out the license, it is difficult to conceive why it may not also demand enough to pay all the expense attending the supervision of the trade at the place licensed." *Ash* v. *People*, 11 Mich. 347.

In *Boston* v. *Schaffer*, 9 Pick. 415, it was held that the city might require the proprietor of a theatre to take out a license and pay therefor $1000; that this fee was not a tax but of the nature of an excise on a particular employment. "There can, therefore," said the court, "be no objection to it in the present case admitting theatrical entertainments to be as meritorious as other occupations. But it seems to be peculiarly proper in employments of this kind. They require to be watched. Towns are put to expense in preserving order, and it is proper that they should be indemnified for inconveniences or injuries occasioned by employments of this nature." And see *Kitson* v. *Mayor, &c., of Ann Arbor*, 26 Mich. 325, 327.

In *Baker* v. *Cincinnati*, 11 Ohio St. 534, the city charged $63.50 for a license to give theatrical performances, and it was held not to have been illegally exacted. The court said: "We think the power to prohibit certain things to be done, unless a license be obtained, and to charge for such license, in many instances of its exercise, stands on the same principle as an assessment. An assessment stands on the principle of benefit to property; a charge for a license may be made in view of the special inconvenience and expense to the government, for the benefit of the individual who asks for the license. Things licensed may be such as should only be permitted under the regulation or supervision of public functionaries. The tax or charge may have reference to such regulation and supervision. Such is the case of exhibitors of shows and performances. An inquiry has to be made as to the character of those who propose to exhibit, and as to the nature of the thing to be exhibited. Then the exhibition may require additional attention from those intrusted with the care of the public peace, to prevent disorder and disturbance. The burden thus devolved on public officials, requiring, perhaps, an increase in their number or compensation, for the benefit of exhibitors of shows or performances, may justly authorize a charge beyond the mere expense of filling up a blank license. The same principle that would authorize a charge for the one extends to the other. To say that it is a tax, and goes into the treasury, does not disprove this object:" *Baker* v. *Cincinnati*, 11 Ohio St. 543. As to whether license is a tax or not, compare this case with *Mays* v. *Cincinnati*, 1 Ohio St. 268, and see *Cincinnati G. L. & C. Co.* v. *State*, 18 Ohio St. 242.

In *Van Baalen* v. *People*, 40 Mich. 258, pawnbrokers were required by ordinance to take out a license, and it was held that the business of pawnbroking gave rise to heavy city expense, especially in the increase of police duty and supervision which it necessitated; that the sum charged for the license ($200) did not greatly exceed the incidental and consequential expense of issuing the license, and therefore the ordinance was held valid.

And in *Chicago Packing Company* v. *Chicago*, 88 Ill. 221, it was held that packing-house proprietors doing business within one mile of the urban limits

might, by ordinance of the city, be required to take out a license and to pay for it $100. The packing company had in this case taken out a license required to be procured by the town within whose limits it actually did business. "Nor does the fact," say the court, "that appellant is liable to pay a fee to each municipality for the privilege of pursuing a vocation the General Assembly regards of such a character as to require regulation and control, militate against the grant or exercise of the power" to regulate and control such establishments by requiring them to take out and pay for a license. And see *St. Paul* v. *Colter*, 12 Minn. 41.

The two Pennsylvania cases cited, *supra*, affirm the validity of an ordinance of the city of Philadelphia, requiring the street car companies to take out a license at $50 per car; but the weight of these cases as authority upon the point under discussion, is somewhat reduced by the fact that in neither case was the reasonableness of the fee passed upon. That question was not before the court, and it expressly refrained from giving an opinion upon it. See opinion of SHARSWOOD, J., in *Johnson* v. *Philadelphia*, 60 Penn. St. 450.

Nor is *May* v. *Cincinnati*, 1 Ohio St. 268, in conflict with these views. In that case, hucksters were required by ordinance to take out a license each year. One did so four successive years, and paid for the four licenses $95, and $4 fees for issuance. This money he then sought to recover on the ground that the ordinance requiring its payment was *ultra vires* and void. The legislature had, by an especial enactment, denied to the city of Cincinnati power "to levy any tax * * * *or other charge*" upon persons bringing provisions to the market, and this was the primary ground upon which the ordinance was declared invalid. "The law," said the court, "exempts every person bringing provisions to the market * * * from any charge whatever." The court held that revenue and not the prevention of huckstering was the object of the ordinance, and that it was not a police regulation, since it was for another than police purposes. It is conceded that where revenue and not regulation is the object of the licensure, it is not valid as an exercise of police power. This was the case in *Mayor, &c., of New York* v. *Second Avenue Railroad Co.*, *supra*.

But in *Mayor* v. *Yuille*, 3 Ala. 137, a city ordinance required bakers to take out a license at an expense of $50, and the court said that it was "inclined to doubt the propriety of that portion of the by-law * * * which requires $20 to be paid as a license, unless the latter can be supported under the taxing power of the corporation." But this is a mere dictum, for the court had already denied the validity of the by-law on other and different grounds. The weight of authority is clearly against this position.

The case, however, suggests the objection most frequently made to charging these license fees, namely, that they are taxes, and as such cannot be laid by the municipality.

However, they are not taxes. The object for which taxes are levied and that for which these fees are charged are different. Revenue is the object of taxation, regulation that of licensure, and it matters not that the license fee is payable into the treasury, that does not make it a tax: *Frankford, &c., Railroad Co.* v. *Philadelphia*. 58 Penn. St. 119; *Johnson* v. *Philadelphia*, 60 Id. 445; *State* v. *Herod*, 29 Iowa 143; *Louisville Central Railroad Co.* v. *Louisville*, 4 Bush 478; *People* v. *Thurber*, 13 Ill. 554; *East St. Louis* v. *Wehrung*, 46 Ill. 292; *St. Paul* v. *Colter*, 12 Minn. 51; *Rochester* v. *Upman*, 19 Id. 108.

So long as the fee charged is one reasonably calculated to effect the object sought, the licensure is valid as an exercise of police power, and is not invalid as a tax. But if the fee be unreasonable

and more than sufficient to effect the regulative purpose, it is a tax, and as such, is unauthorized and uncollectable, unless the corporation has power to impose it for revenue purposes: *State* v. *Roberts*, 11 Gill & J. 506; *Mays* v. *Cincinnati*, 1 Ohio St. 268; *Cincinnati* v. *Bryson*, 15 Ohio 625; *Freeholders* v. *Barber*, 7 N. J. L. 64; *Kip* v. *Paterson*, 26 Id. 298; *Bennett* v. *Birmingham*, 31 Penn. St. 15; *Commonwealth* v. *Stodder*, 2 Cush. 562; *Chilvers* v. *People*, 11 Mich. 43; *Mayor* v. *Yuille*, 3 Ala. 137; *Johnson* v. *Philadelphia*, 60 Penn. St. 451; *State* v. *Herod*, 29 Iowa 123; *Mayor* v. *Second Avenue Railroad Co.*, 32 N. Y. 261; *Home* v. *Ins. Co.* v. *Augusta*, 50 Ga. 530. But courts will not closely scrutinize a license fee with a view to adjudge it a tax, where it does not appear unreasonable in amount, in view of its purpose as a regulation. Courts will not review municipal discretion in imposing license fees where it has not been abused. "The subject" (*i. e.* what sum shall be charged), said GRAVES, J., "will not admit of nice calculation, and it would be futile to require anything of the kind:" *Van Baalen* v. *People*, 40 Mich. 258; *Ash* v. *People*, 11 Mich. 347; *Johnson* v. *Philadelphia*, 60 Penn. St. 451; *Burlington* v. *Putnam Ins. Co.*, 31 Iowa 102.

Undoubtedly, street cars require especial police service. Extra officers are required to see that the cars do not obstruct the street crossings, and to see that vehicles do not delay or hinder the cars. They are required to preserve order, and to prevent theft and other crime likely to be committed in the crowded cars, and to arrest persons disorderly thereon or otherwise offending.

It would be difficult to demonstrate that $50 per car is an unreasonable fee to charge for these extra services, and, if it be reasonable, the ordinance requiring the license to be taken out and the fee to be paid is valid.

ADELBERT HAMILTON.

Chicago, March 9th, 1881.

Supreme Court of the United States.

GEORGE B. BLAKE ET AL. EXECUTORS OF G. B. BLAKE, DECEASED *v.* JOHN W. McKIM, JUDGE OF THE PROBATE COURT FOR THE COUNTY OF SUFFOLK, MASSACHUSETTS.

Congress, in determining the jurisdiction of the Circuit Courts over controversies between citizens of different states, has not distinctly provided for the removal, from a state court, of a suit in which there is a controversy, not wholly between citizens of different states, and to the full and final determination of which one of the necessary or indispensable parties, plaintiffs or defendants, seeking the removal, is a citizen of the same state with one or more of the plaintiffs or defendants against whom the removal is asked.

IN error to the Circuit Court of the United States for the District of Massachusetts.

This was an action upon a probate bond executed by James M. Howe, as trustee under the will of Henry Todd, with two sureties, one of whom was the testator of the defendants to recover from